IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 366 OF 2001

1. Kallappa Satyappa Koli

2. Sidrayya Satyappa Koli

3. Bhimraya Satyappa Koli

4. Suryakant Satyappa Koli

5. Sheku alias Chandrashekhar
   Satyappa Koli

6. Ramning Satyappa Koli

7. Mahantesh Kallappa Koli

All residents of Tikondi

Taluka Jat, District Sangli.

(At present lodged in Kolhapur
Central Prison, Kalamba,
Kolhapur. ....Appellants

Versus

The State of Maharashtra. ...

Respondent.

Mr. J. V. Patil with Mr. S. A. Ingawale for the Appellants.

Smt. V.R. Bhosale, Additional Public Prosecutor, for State.

CORAM : **J.N.PATEL AND**
A.A. SAYED, JJ.

JUDGMENT RESERVED ON: 16TH JUNE, 2007.

JUDGMENT PRONOUNCED ON: 6TH AUGUST, 2007.

JUDGMENT (Per J.N. Patel, J.):-

This Criminal Appeal is filed by the original accused Nos. 2, 3, 4, 5, 6, 9 and 10 challenging the judgment and order dated 20th April, 2001 passed by the IVth Additional Sessions Judge, Sangli in Sessions Case No. 134/1997 for having convicted them under Section 148, 302 read with Section 149, 324 read with Section 149, 452 read with Section 149, 307 read with Section 149 and sentencing them to various terms of imprisonment and fine along with imprisonment for life. The substantive sentences were ordered to run concurrently.

2. In nutshell it is the prosecution's case that the accused persons are neighbours of deceased Mallapa and Sidrayya and their agricultural fields are on the eastern side of the land of deceased Mallapa and Sidrayya. There were disputes between the deceased Mallapa and Sidrayya and the accused persons relating to the common boundary of their respective agricultural lands. According to the prosecution, on 23rd April, 1997 Mallapa, Sidrayya and Subhash had gone to Jat Court and after attending the Court they returned to their farm house at about 8.00 p.m. After taking meals deceased Sidrayya went to village Pandavzari and deceased Subhash went to the farm house of his father, deceased Mallappa. On 26th April, 1997, deceased Sidrayya returned to his farm house early in the morning. After fetching water from the well and while he was putting the water pot on the ground, the appellants- accused Chandrashekhar and Mahantesh assaulted Sidrayya with an axe. Shantabai (PW-11), wife of Sidrayya, and Nilavva (PW-9), daughter of deceased Sidrayya, came out of the house. On this, the appellant accused Bhimaraya, Suryakant and others came there armed with sticks and started beating Sidrayya and Shantabai. At the relevant time deceased

Mallappa and his wife Channavva proceeded towards the farm house of Sidrayya. On this the appellants-accused Mahantesh and Chandrashekhar rushed towards them and inflicted axe blows on the legs of deceased Mallappa and Channavva and other accused persons also joined them in beating Mallappa and Channavva with sticks. Thereafter the appellants-accused Suryakant and Mahantesh entered in the farm house of Mallappa and dragged Subhash out of the farm house and inflicted blows on the person of deceased Subhash and were joined by other accused persons who beat him by giving stick blows. Bhouravva (PW-7), daughter of Mallappa begged to the accused persons by touching their feet not to beat her brother Subhash but the accused persons not only abused her but also assaulted her. Shantabai (PW-11), wife of the deceased Sidrayya, sent Nilavva (PW-9) daughter of Sidrayya to Babasaheb Mane and others. Babasaheb Mane and (PW-16) Shamu Katare reached the farm house of deceased Sidrayya and found that the victims were lying there and Shantabai, Chanavva and Bhouravva were having injuries on their persons. On this, one Gurappa (PW-15) went to village Tikondi and informed the incident to

the Police Patil and villagers and returned back in a jeep along with police patil, sarpanch and villagers. The injured Shantabai, Chanavva and Bouravva were taken in a jeep to Umadi Police Station at about 1.30 p.m., where F.I.R. came to be lodged by Bhouravva Bidri (PW-7). The F.I.R. (Exhibit-73) came to be recorded by A.P.I. Gadade who was at the relevant time attached to Umadi Police Station. On the basis of the F.I.R. (Exhibit-73) API Gadade registered Crime No. 27/1997 under Sections 147, 148, 302, 307, 452, 325, 323, 504, 506 read with Section 149 of the Indian Penal Code and also forwarded the report to his superiors. On the same day, API Gadade visited the spot and prepared inquest panchanama of the dead bodies of deceased Sidrayya (Exhibit 26), deceased Mallappa (Exhibit 27) and deceased Subhash (Exhibit 28). He then sent the dead bodies to the Primary Health Centre, Madgyal for post-mortem examination. He recorded the statements of Nilavva Gobbi, Prakash Patil and others and instructed P.H.C. Mulla to arrest the accused persons. On the next day, i.e. 27th April, 1997, API Gadade visited the spot and prepared the spot panchanama (Exhibit 32) and instructed the Police Head Constable Mulla to record the statements of injured

persons and he proceeded to record the statements of other persons conversant with the incident. Thereafter he returned to the police station where all the eight accused persons were brought and seized the clothes of the accused persons who included two females and arrested them. In the course of investigation he was able to collect incriminating material like sticks and an axe from the appellant accused Suryakant on 29th April, 1997 and on 1st May, 1997 an axe and sticks and seized them under panchanama (Exhibit 49). He discovered an axe and sticks from appellant accused Chandrakant Satyappa under the panchanama (Exhibit 42). On arresting the accused persons, he has sent them for medical examination and carried out further investigation. After completing the investigation and on receipt of medical and forensic reports, he filed charge sheets against all the accused persons in the Court of J.M.F.C. Jat on 29th May, 1997.

3. The appellants-accused along with two other female accused (who were acquitted in the case) came to be charged of having formed an unlawful assembly whose common object was to

commit murders of their victims and attempted to commit murder of the witnesses and caused them grievous hurt. All the appellants-accused pleaded not guilty and claimed to be tried. It was their case that they have been falsely implicated in the case at the instance of the relatives of the deceased as they were having dispute regarding common boundary of their respective agricultural lands with them. They have specifically come out with a case that Sidrayya and others are assaulted and came to be murdered by the members of the Pardhi community and that they have been made a scape-goat.

4. The Trial Court, after recording the evidence, found that the prosecution has proved the charges against all the accused except accused no. 7 Laxmibai Kallappa Koli and accused no. 8 Bhagavva Sidrayya Koli who came to be acquitted.

5. The learned counsel appearing for the appellants submitted that the fact that the incident took place in the early hours on 26th April, 1997 i.e. between 6.30 a.m. and 7.00 a.m. and that the F.I.R. was lodged by Bhouravva Bidri at the police station at 4.30 p.m. itself

goes to show that the appellants-accused have been falsely implicated in the case after due deliberation between the relatives of the victims and the villagers who were well aware of the on-going litigation between the parties.

6. It is submitted that Sidrayya was in the habit of visiting Pardhi Vasti for entertainment and in the evidence led by the prosecution, they have put it to all the eye witnesses that on the night of 24th April, 1997 Sidrayya had actually gone to the Pardhi Vasti which was just across the agricultural field and in all probability because of his conduct the Pardhis were responsible for committing the murder of not only Sidrayya but also his relatives. It is submitted that the conduct of the eye witnesses who claim to be the victims of assault is doubtful and their evidence being that of interested witnesses being contradictory will be most unsafe to rely so as to convict the appellants-accused.

7. It is submitted by the learned counsel for the appellants-accused that the prosecution has examined, in all, nine witnesses to

prove their case against the accused. Out of these, PW-7 Bhouravva Bidri, PW-8 Nilavva Gobbi and PW-11 Shantabai are interested witnesses. If one examines their evidence, it is full of improbabilities, material omissions and contradictions which rather goes to show that they have been tutored to falsely implicate the accused persons and, therefore, are not reliable. It is submitted that the motive attributed by the prosecution against the appellants-accused for committing murders of three persons is of trivial nature. According to the learned counsel appearing for the appellants-accused, admittedly there was a boundary dispute between the victims and the accused but the same was being sorted out by litigating in Court and therefore, it is highly improper to rely on the prosecution's case that on the fateful day the appellants-accused would gather armed with axes and sticks and assault the victims without any rhyme or reason as no incident has been cited by the eye witnesses or the villagers that the incident was a result of any quarrel and, therefore, there was no justification on the part of the appellants-accused to have committed such heinous offences.

8. The learned counsel for the appellants-accused specifically assailed the evidence of Nilavva Gobbi (PW-9), the daughter of Sidrayya. It is submitted that her evidence is full of contradictions and material omissions which rather goes to disprove her presence at the scene of offence and, therefore, if the prosecution witnesses can go to such an extent so as to falsely implicate the appellants-accused, the evidence of the other eye witnesses who are close relatives of the deceased deserves to be discarded.

9. It is submitted by the learned counsel appearing for the appellants-accused that the forensic and medical evidence by itself does not assist the prosecution's case in proving the guilt against the accused persons. According to the defence, if the prosecution case is to be accepted that the assault was committed in the way stated by Nilavva who claims to be the first to see the assault on her father from a close distance, it belies her evidence as it does not stand corroborated by medical evidence as there are no marks of axe blows found on the back and shoulders of deceased Sidrayya as stated by Nilavva.

10. About the other witnesses, it is submitted that they are formal in nature and the discovery of weapons from the two accused persons like axe and sticks does not help the prosecution and, therefore, the appellants-accused deserve to be acquitted.

11. Mr. J.V. Patil, the learned counsel for the appellants, placed reliance on the decision of the Supreme Court in the case of State of U.P. vs. Motiram and others, reported in 1990 SCC (Cri) 585, wherein it was held that the testimony of the injured witnesses may command acceptance provided the same inspires confidence and is free from any infirmity. It is submitted that in the present case he has been able to demonstrate from the cross-examination of one of the key witnesses examined by the prosecution i.e. Nilavva, daughter of Sidrayya, that she is a got-up witness. Another case cited by the learned counsel for the appellants-accused is Muluwa son of Binda and others vs. The State of Madhya Pradesh, reported in 1975 SCC (Cri) 759 in support of his contention that the eye witnesses did not disclose the name of the assailants to the villagers and the police on

the very first opportunity and that their evidence came to be recorded on the next day which also creates doubt about the prosecution case. It is further submitted that all the witnesses examined by the prosecution being interested witnesses in the case of Bhimappa Jinnappa Naganur vs. State of Karnataka, reported in 1993 SCC (Cri.) 1053 the Supreme Court has observed that their evidence has to be considered with necessary caution. It is, therefore, submitted that taking into consideration the unnatural behaviour of the eye witnesses and the eye witnesses having suppressed true and material facts, it cannot be said that it is the appellants-accused who have committed the offence.

12. Mrs. Bhosale, the learned Additional Public Prosecutor, submitted that the prosecution has been able to establish that the appellants-accused had the necessary motive to commit such a heinous offence of having murdered three members of the family and injured their relatives. Admittedly, there was a dispute regarding the boundary of the agricultural lands owned by the appellants-accused as well as the victims which was the cause for this unfortunate

incident in which three persons lost their lives. The learned Additional Public Prosecutor has placed reliance on the judgment of the Supreme Court in the case of Ramkishore Patel and others v. State of Madhya Pradesh, reported in 1997 Cri. L.J. 207.

13. The learned Additional Public Prosecutor submitted that even accepting that the daughter of Sidrayya (PW-9) Nilavva has made some improvement in her case, there is no reason to discard the eye witness account of Shantabai (PW-11), wife of deceased Sidrayya, and Bhouravva Bidri (PW-7), daughter of deceased Mallappa, who is an injured eye witness, whose evidence is cogent, consistent and reliable and stands corroborated by the medical evidence and the evidence of other injured witnesses. It is submitted that merely because they are closely related to the victims, does not mean that their evidence has to be discarded particularly when in the facts and circumstances of the case their presence at the scene of occurrence cannot be disputed and they were the natural witnesses to the incident.

14. The learned Additional Public Prosecutor submitted that the story put up in defence by the appellants-accused that Sidrayya and others must have been assaulted and killed by persons from the Pardhi community is nothing but a cock-and-bull story as there is no evidence on record to show that Sidrayya had a quarrel with the Pardhis and nobody saw them assaulting the victims. It is further submitted that the spot panchanama where all the three victims were found lying dead clearly goes to show that the victims were assaulted in their own agricultural lands near their farm house and the conduct of the witnesses is quite natural in reacting to the situation. It is submitted that the defence is trying to take advantage of the fact that there has been a delay in lodging the F.I.R., but according to the prosecution there has been no delay at all in lodging the F.I.R., as after the villagers and police patil were informed of the incident they came to the help of the victims who were removed to hospital and the police after recording the report of the complainant took immediate steps for the investigation of the offence. It is submitted that there was no reason why the relatives of the deceased who have survived the assault would falsely implicate the appellants-accused if they were

not the assailants and spare the Pardhis who, according to the defence, were the persons who killed the victims and injured their relatives. It is submitted that it is the case of triple murder and a fit case to impose capital punishment but the trial Court was quite considerate. The learned Additional Public Prosecutor fairly conceded that the State has not preferred any appeal for enhancement of sentences.

15. The only key issue which requires to be examined in this appeal is as to whether it is the appellants-accused who have committed the offence for which they were charged, convicted and sentenced by the trial Court.

16. We would not like to dwell upon the issue as to whether the death of deceased Sidrayya, Mallappa and Subhash was homicidal as it is not much disputed. The prosecution has examined Dr. Vishwas Sidram Dhende (P.W.5) who has conducted the post-mortem of the dead body of Mallappa (Exhibit 54), dead body of Sidrayya (Exhibit 52) and dead body of Subhash (Exhibit 56).

We propose to examine the evidence of PW-7 Bhouravva Birappa Bidri who is the complainant who lodged F.I.R. in the matter and was injured in the incident. She has suffered the injuries due to stick and axe blows. PW-9 Nilavva Sidrayya Gobbi, the injured daughter of Sidrayya Gobbi, and PW-11 Shantabai Gobbi, wife of deceased Sidrayya Gobbi, also got injured in the incident. These are the only eye witnesses to the incident and on the basis of their evidence the trial Court has found the appellants-accused guilty of having committed the offence.

17. First, we will take up for consideration the evidence of Nilavva Sidrayya Gobbi (PW-9) who is the injured daughter of deceased Sidrayya Gobbi. According to her, the appellant-accused Chandrashekhar and Mahantesh were armed with axes and appellant- accused no.2 Kallappa and appellant-accused no. 3 Sidrayya and appellant-accused no. 9 Ramning were armed with sticks and to start with, it is the appellants-accused Mahantesh and Chandrashekhar who assaulted her father with axes and Bhimraya, Satyappa, Kallappa, Sidrayya, and Ramning joined the assault by

giving stick blows and original accused no. 7 Laxmibai and original accused no. 8 Bhagavva gave stick blows and fist blows and that the appellant-accused no. 5 Suryakant assaulted Santabai (PW-11) by axe. She has also deposed that the accused Mahantesh and Suryakant gave axe blows and others followed them by assaulting the deceased Sidrayya with stick blows and further deposed to the effect that due to the assault with axe, legs of Mallappa were cut and his eyes were closed. On going through her evidence including the cross-examination, we find it unsafe to rely on her evidence, though her presence at the scene of occurrence at the time of the incident is spoken of by her own mother Shantabai Gobbi (PW-11) and Babasaheb Mane (PW-16) has deposed to the effect that she had come to him and informed about the incident.

18. Further, the prosecution has led the evidence of Dr. Dhende who examined Nilavva Gobbi (PW-9) and found that she had injuries which can be caused with an axe. No doubt, her evidence stands corroborated by the medical and forensic evidence led by the prosecution. But taking into consideration the material omissions in

her evidence in respect of complicity of the appellants-accused in assaulting her father Sidrayya though she may be present at the scene of occurrence, it would not be safe to rely on her evidence of having witnessed the incident. Therefore, now we are left with the evidence of PW-7 Bhouravva Bidri and PW-11 Shantabai Gobbi, wife of deceased Sidrayya. PW-7 Bhouravva Bidri is the sister of Sidrayya, Subhash and Shivanna and daughter of Mallappa. In her evidence she has stated that she was residing with her father at the time of the incident as she had come to reside with her father for delivery of her daughter two months prior to the date of the incident along with her husband. She knew the appellants-accused as they are owners of the agricultural lands adjoining the agricultural land of her father. She has deposed to the effect that there was a dispute between her father and the accused persons over the agricultural land which was going on for the last two years and that on 25th April, 1997 her brothers Sidrayya and Subhash had attended Jat Court in respect of the dispute of the agricultural field and returned in the evening at about 8.00 p.m. According to her, on the next day in the morning while she was taking bath she heard hue and cry from

the farm house of her brother Sidrayya. It was 7.30 a.m. Her husband had gone to village Tikondi for bazaar. Her father, brother Subhash and her daughter Annapurna were present in the house. On hearing the hue and cry of her parents, she saw them running towards the farm house of Sidrayya and saw 10 Koli persons coming from opposite side who came across her parents near the well. She had identified the accused persons as Koli persons who came across her parents near the well. She has specifically stated that they were holding axes and sticks in their hands and has stated that the accused Mahantu, Sheku alias Chandrashekhar and Suryakant were holding axes in their hands. Accused Kallappa, Sidrayya, Bhimraya and Ramning were holding sticks in their hands and they started beating her father and mother who fell on the ground. Thereafter they came to her farm house where she was residing and told her that two persons were already assaulted and were inquiring about her brother Subhash who was inside the farm house. According to her, the accused Mahantu and Suryakant entered in their farm house and dragged her brother Subhash outside and started beating him with axe and sticks and the accused ladies were beating him with fists and

blows. When she tried to rescue her brother Subhash, the accused persons beat her on her head, below left eye, on chin and forearm. Thereafter they ran away to village Tikondi. She administered water to her brother Subhash who thereafter died. Thereafter she noticed that her mother has sustained injuries on her head, on face and her left leg was cut and she was coming towards their farm house by dragging herself on her buttocks. She tried to give water to the father but he could not take it because he was already dead. So she went to the farm house of her brother where she found that her brother Sidrayya was lying in a pool of blood and her brother's wife Shantavva was sitting in front of the farm house. She had also sustained injuries. Shantavva told her that Koli persons assaulted her and her husband. Thereafter she returned to the farm house of her father. Thereafter, after one hour her husband came from village Tikondi. She told her husband that Koli persons assaulted her brothers and father. Her husband saw the dead bodies of her brothers and father and then went to village Tikondi and informed the incident to the Police Patil. Thereafter police patil and some villagers came to their farm house in a jeep after 1 or 2 hours and they took

Shantavva in the jeep and came to the farm house of her father. They took her in the jeep and then they left village Tikondi and took them to Umadi Police Station. They left village Tikondi at about 1.30 p.m. This was due to the non-availability of the jeep. She has specifically deposed in her evidence that she along with her mother, brother's wife Shantavva, her husband, Dhanappa, jeep driver Prakash and Police Patil went to Police Station Umadi in a jeep. She narrated the incident to the police which was reduced in writing. Then they were sent to hospital with her husband along with police. She has confirmed the complaint which was lodged by her at the police station which came to be marked Exhibit 73. She has also stated that she was referred to the hospital at Sangli. Thereafter she along with mother Channavva and brother's wife Shantavva were referred to Civil Hospital Sangli for further treatment and they were admitted in Civil Hospital, Sangli for about 8 days whereas her mother Channavva was admitted for about 3 months. She had identified the articles like sticks and axes in the court as the weapons of assault which were in the hands of the assailants and also marked presence of Nilavva near the well from where she has raised hue and cry at the

time of the incident.

19. This witness was cross-examined at length. Nothing has been brought on record to show that she is not telling the truth. On the other hand, her evidence stands corroborated by the injury certificate Exhibits 68 and 69 relating to the injuries suffered and for proving the same Dr. Sambhaji Shivaji Deshmukh (PW-6) was examined who deposed to the effect that the injuries suffered by Bhouravva and Shantabai were grievous injuries. They are possible by sticks and axes. Similar is the case of Shantabai wife of Sidrayya (PW-11). In her evidence she has deposed before the Court as to in what manner the incident took place and how the accused persons assaulted her husband and father-in-law and brother-in-law who came to be killed and they were assaulted by the accused persons. In her evidence before the Court she has stated that on the day of incident she got up at about 5.30 to 6.00 a.m. and after completing daily routine her husband had gone to the well to fetch water with a water pot and she was making dough and her daughter was grinding pulses near the door of the farm house and that she heard the cry of her

daughter Nilavva, so she went out and saw accused Chandrashekhar (Sheku) and accused Mahantesh were beating her husband with the aid of axe. Accused Kantu (Suryakant) and Bhimraya reached there having an axe and stick in their hands. Thereafter accused Laxmibai, Bagavva, Kallappa, Sidrayya and Ramning reached there and they all gave beating to her husband and herself. Her daughter was also there who was assaulted by accused Suryakant. She sustained injuries on her head, shoulders, both the fore-arms and both the legs. Her daughter left the spot and stood near the well. According to her, her husband fell on the ground. Thereafter the accused persons left the spot. Her husband had sustained injuries on his legs, thigh, stomach, chest and head. According to her, the accused persons after assaulting her husband went to the farm house of her father-in-law. However, she followed them. She saw they were assaulting her father-in-law and mother who had come towards the farm house. She went herself behind her house by dragging herself on buttocks and was standing by holding the wall of the farm house. She noticed that after assaulting her father-in-law and mother-in-law the accused persons went to their farm house from where they dragged out her

brother-in-law Subhash and beat him. She has also deposed to the effect that Bhouravva and Annapurna were asking the accused persons not to beat Subhash but even Bouravva was beaten and after beating Subhash the accused persons left the scene of offence. According to her, her daughter returned to the farm house and with her help she came to the farm house. Her daughter Nilavva went to see the other relatives and told her that they have been injured. Thereafter she asked her daughter Nilavva to inform Bapusaheb Mane about the incident. Her daughter Nilavva went to the field of Bapusaheb Mane and within 10-15 minutes came back and informed her that Bapusaheb Mane would be coming. After some time, Bapusaheb Mane and Shamu Katare reached their house; thereafter the police patil and other villagers also came. They were taken in a jeep. So far as Shantabai is concerned,her evidence also stands corroborated by the evidence of Dr. Sambhaji Shivaji Deshmukh (PW-6) who has certified about the injuries suffered by her which could be caused by sticks and axes. Her evidence also gets corroborated by the evidence of Bapusaheb Mane who came to the scene of offence on being informed by Nilavva. As we have not placed reliance on the

evidence of Nilavva in all probability Nilavva reached the scene of occurrence after the assault was made. Such a possibility cannot be ruled out. But that does not mean that there was no eye witness to the incident,

particularly on going through the evidence of Bhouravva Bidri (PW-7), the complainant in the case, and Shantabai Gobbi (PW-11).

20. The evidence of these two witnesses stands amply corroborated by the medical evidence. The prosecution has examined Dr. Vishwas Sidram Dhende (PW-5) who has conducted autopsy on the dead bodies of the three victims. The first one was that of Sidrayya Mallappa Gobbi in whose case the doctor has recorded the opinion that the cause of death was due to cardiorespiratory failure due to puncture of lungs and heart due to fracture of ribs and due to subdural haematoma, due to fracture of skull-bone and multipal incised wounds and multiple fractures of bones and so on. Dr. Dhende has specifically stated that injury nos. 3,4,5,6,9 and 10 are possible due to axe blows which were shown to him on being recovered from the accused persons and rest of the

injuries except injury no. 16 are possible due to stick blows. The second dead body was that of Mallappa Shivappa Gobbi. In his case also Dr. Dhende (PW-5) has specifically stated that the cause of death was due to haemorrhagic shock due to multiple incised wounds and multiple fractures of bones. Similarly in the case of the third dead body of Subhash Mallappa Gobbi he has stated that the cause of death was due to haemorrhagic shock due to multiple incised wounds and multiple fractures of bones. The doctor has specifically stated that the injuries are possible by sharp weapons like axe and sticks blows which are the articles which came to be seized by the police at the instance of the appellants-accused. In the cross-examination of the medical officer nothing could be pointed out that the nature of injuries found on the dead bodies of the victims could not have been caused by weapons like axes and sticks and according to the eye witness account the appellants-accused were armed with axes and sticks and assaulted all the three victims including the witnesses i.e. Bhouravva Bidri (PW-7) and Shantabai (PW-11). The other evidence on record is of a formal nature and is not much disputed and is that of panchas to the inquest panchanama, (Exhibits

26, 27 and 28), spot panchanama (Exhibit 32) and forensic report (Exhibit 100) containing results of analysis of articles and weapons seized in the course of investigation which records that they have been stained with human blood.

21. On considering the evidence of these two eye witnesses along with other evidence on record, we have no hesitation to arrive at the conclusion that it is the appellants-accused who have committed murders of Mallapa, Sidrayya and Subhash and assaulted the witnesses which caused them grievous hurt. The plea taken by the accused persons in their defence that they have been falsely implicated cannot be accepted for the very reason that their presence and participation in the offence has been proved beyond shadow of doubt by the direct evidence led by the prosecution by examining two eye witnesses whose presence at the scene of occurrence cannot be doubted. Secondly, the plea of the accused that the victims have been assaulted by the members of the Pardhi Community does not figure anywhere in the prosecution case except for suggestions being put to the witnesses. Even the police officers who were concerned

with the investigation of the case have specifically denied having come across any material so as to investigate the case from that angle. We, therefore, find that the learned trial Court was justified in convicting the appellants-accused for having committed offences under Sections 148, 302 read with Section 149; 324 read with Section 149; 452 read with Section 149; 307 read with Section 149 and sentencing them to various terms of imprisonment and fine along with imprisonment for life. The trial Court gave benefit of doubt to two ladies who were prosecuted for being members of the unlawful assembly whose common object was to cause grievous hurt to the victims.

22. We, therefore, do not find any merit in the appeal. The same is dismissed.

(J.N. Patel, J.)

(A.A. Sayed, J.)